S.B. CIVIL WRIT PETITION NO.622/2004

Puran Singh and another vs. Smt. Hukami Bai and others

Date : 27.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Dron Kaushik, for the petitioners.
Mr. G.R. Goyal, for the respondents.

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Heard learned counsel for the parties.

The petitioners are aggrieved against the order dated 23.9.2003 passed by Additional District Judge No.2, Sri Ganganagar in Civil Suit NO.29/2002 by which the trial court rejected the application filed by the petitioners under Section 10 C.P.C. seeking stay of proceedings of the suit on the ground that another suit between the parties involving the same issue is pending before the Revenue Court and that suit was filed earlier in time.

The trial court after considering the nature of the suit observed that the plaintiffs in civil suit sought relief of declaration that the will in dispute may be declared as forged and concocted. The plaintiffs also sought partition of the urban property. According to the trial court, the reliefs

prayed for in this matter can be granted only by the civil court, therefore, the suit proceedings cannot be stayed.

Learned counsel for the petitioners submits that in the revenue court, when an application was submitted under Order 7 Rule 10 C.P.C. for return of the suit, it was opposed by the respondents on the ground that the suit is triable by the revenue court and on this objection, the revenue court dismissed the application of the petitioners holding that the suit is triable by the revenue court. Therefore, according to learned counsel for the petitioners, the issues involved in two suits are one and the same and the question of will being forged and void can be decided by the revenue court.

I have considered the rival submissions.

It is clear from the undisputed fact that the plaintiffs sought the decree for partition of the urban property also and are seeking relief of declaration about the will. Therefore, even if the suit is decided by the revenue court, all the issues of the civil suit cannot stand decided. Hence, the trial court has not committed any error of law in rejecting the application of the petitioners so as to call for interference by this Court under Article 227 of the Constitution of India.

Consequently, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya